

application is that the patent fails to claim, in the form of dependent claims, certain embodiments disclosed in the specification that fall within the genus set forth in the independent claims.”

Newly added claims 9-43 address that error. Nothing more is required.

The Examiner also rejects claim 23 “as being broadened in a reissue application filed outside the two year statutory period.” According to the Examiner, the “broadening” arises from the fact that claim 23 is broader than original claim 7. There is no basis for this rejection. Whether or not claim 23 is broader than claim 7 is irrelevant because the test is whether the claim covers a product or process that could not have infringed **any claim** of the original patent. Therefore, as long as the newly added claim is narrower in scope than at least one claim of the original patent, it is not a broadened claim for purposes of reissue.

With the test properly articulated, it is apparent that the proper comparison, for the purposes of determining whether broadening has occurred, is between claim 23 and original claim 1. Claim 23 depends on claim 1, and thus is necessarily narrower than claim 1. Accordingly, a person could not infringe claim 23 without also infringing claim 1. As such, claim 23 is not a broadened claim for purposes of reissue, and the rejection should be withdrawn.

The Examiner has refused to consider all the references listed under Other Documents on Form PTO-1449 of the Information Disclosure Statement on the ground that the PTO did not receive the references. Applicant has already submitted copies of each of these references. However, the PTO lost the references, along with most of the originally submitted reissue papers. Applicant has already re-submitted the reissue papers. Applicant is now re-submitting copies of all the references listed under Other Documents, and requests the Examiner to initial the form upon receipt.

The Examiner also has refused to consider a number of references listed in Form PTO-1449 under Foreign Patent Documents because the Form does not list their publication dates. Applicant now re-submits a Form PTO-1449 that includes all of the publication dates, and requests the Examiner to initial the form upon receipt.


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Page : 3 of 3

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Respectfully submitted,

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